IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRIMINAL REVISION NO.2302 OF 2005

DATE OF DECISION: AUGUST 21, 2007

Kuldip Singh.

.....Petitioner

VERSUS

Malik Singh Cheema

....Respondent

CRIMINAL REVISION NO.2303 OF 2005

Kuldip Singh.

.....Petitioner

VERSUS

Lehmber Singh

....Respondent

CRIMINAL REVISION NO.2304 OF 2005

Kuldip Singh.

.....Petitioner

VERSUS

Pal Singh

....Respondent

1. **Whether Reporters of local papers may be allowed to see the judgement?**
2. **To be referred to the Reporters or not?**
3. **Whether the judgment should be reported in the Digest?**

PRESENT: Mr. Anupam Gupta, Advocate,
for the petitioner.

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RANJIT SINGH, J.

These three revisions are directed against the order of acquittal of three respondents, namely, Malik Singh Cheema, Lehmber Singh and Pal Singh passed by the Appellate Court. These three respondents were tried for offences under Sections 465, 466, 468, 471, 120-B IPC by Judicial Magistrate Ist Class, Phillaur. Upon conviction, they were sentenced to suffer RI for one year under each of the offence alleged against them. They, however, succeeded in their appeal filed before the Additional Sessions Judge, Jalandhar, which is now impugned through these three separate revision petitions, which are being disposed of by this common order.

Mr.Anupam Gupta, learned counsel appearing for the petitioner, by referring to the trial Court judgment would say that the said Court was justified in relying upon a report, Ex.PH, given by a Scientific Officer, Forensic Science Laboratory, Chandigarh, which, in terms of Section 293 Cr.P.C., was rightly held admissible per-se by the trial Court. The Appellate Court, however, found that report of an hand-writing expert, even if given by officer of the Forensic Science Laboratory, would not be per-se admissible and hence, would not be of any help to the prosecution as was held by the trial Court. This finding of the Appellate Court is seriously challenged by the counsel for the petitioner. The counsel submits that this aspect would require consideration. Learned counsel also did make an attempt to draw my attention to the evidence given by the prosecution witnesses but he gave up this aspect and did not dispute the fact that re-appreciation

of evidence may not fall within the scope of the revisional jurisdiction. He accordingly confined his submission to the sole ground relating to admissibility of Ex.PH, which is the report of hand-writing expert prepared by the Scientific Officer of Forensic Science Laboratory.

Reference to Section 293 Cr.P.C. would show that certain types of reports given by officers working at Forensic Science Laboratory are per-se admissible. Section 293 (4) says that this Section applies to the following Government Scientific Experts, namely:-

(a) any Chemical Examiner or Assistant Chemical Examiner to Government;

(b) the Chief Inspector of Explosives;

© the Director of the Finger Print Bureau;

(d)the Director, Haffkeine Institute, Bombay;

(e) the Director, [Deputy Director or Assistant Director] of a Central Forensic Science Laboratory or a State Forensic Science Laboratory;

(f) the Serologist to the Government.

Thus, the Court can accept documents issued by the above-noted six officers, who are mentioned in this Section as a valid evidence without examining the author. Any document purported to be a report under the hand of these officers as such may be used as evidence in any trial or proceedings, without summoning the said officer as a witness, unless the Court has expressly directed him to appear personally. Sub-Section (2) of Section 293 Cr.P.C. also says that the Court may, if it thinks fit,

summon and examine any such expert as to the subject-matter of his report. The officers who can be excused from appearing before the Court, though had signed the report, are enumerated in the Section itself. Hand-writing expert, even if he be working as a Scientific Expert, is not one of the officers listed in the Section, whose report can be admitted in evidence without examining him. The report of persons not mentioned in the sub Section (4) of 293 Cr.P.C. would be inadmissible in evidence under this section as can be seen from the words " to whom this section applies" used in sub Section (1) of the Section. While taking the view that a report of hand-writing expert, even if given by Scientific Officer working at Forensic Science Laboratory, would not be per-se admissible without his examination, the Appellate Court has relied upon the case of ***Nirmal Vs. State of Punjab,*** 2002 Cri.L.J. 447. In the said case, it is clearly held that the report of hand-writing expert, even if it is given by the Expert working in Forensic Science Laboratory, would not be admissible under Section 293 Cr.P.C., unless the maker of this report is summoned and examined as a witness.

Acceptance of a mere written report as evidence in a criminal case without subjecting the author to cross-examination is extremely dangerous and no person is to be put in peril of punishment on such written reports not given on oath and thus remaining untested by cross-examination.

It is required to be noticed that report of a hand-writing expert is an opinion evidence of an expert and admissible under Section 45

of the Indian Evidence Act and can never be conclusive. While giving his report, such an expert gives his finding on some of the peculiar features noticed by him in the hand-writing or the signatures. An opinion of hand writing expert if not taken on oath would not be an evidence. This apart an opportunity to cross-examine this witness, if the prosecution or other party wishes to rely on it, would also be legally essential. This may even be true in respect of report of chemical examiner specially so when the accused wants him for cross-examination. When chemical examiner reports or hand writing experts reports contains an opinion apart from the observation or the findings then right to cross examination cannot be denied and if done can lead to vitiation of the proceedings. The accused can not be denied the right to test the opinion of an expert when conviction is sought on the sole basis of such report. It can not, thus, be said that such a report by hand-writing expert, even if given by the officer working in the Forensic Science Laboratory, would be per-se admissible, especially so when such an officer is not mentioned as one of the officers whose report can be exhibited on record without examining him. It may also be noticed that Section 293 (2) Cr.P.C. clearly leave a discretion with the court not to dispense with the examination of such an officer, of course subject to a rider contained in sub section (3) of the Section. Accordingly, I do not find any infirmity in the finding recorded by the appellate Court in discarding Exhibit PH from consideration, which was the main basis of finding the respondents guilty of charge. No interference in the verdict of

acquittal of the respondents as such is made out on this sole ground advanced before him.

The revision petitions are accordingly dismissed.

August 21, 2007 **(RANJIT SINGH)**
khurmi **JUDGE**